

My name is David Ashton, Assistant General Counsel for the Port of Portland. This testimony is provided by the Port of Portland in support of HB 4084 -2.

I have specialized in environmental and natural resources law for 25 years and have extensive experience representing a variety of clients buying, selling and redeveloping contaminated brownfields around the country. I represent the Port on brownfields redevelopment matters. Redeveloping contaminated brownfields is a central component of the Port's regional economic development mission.

The property tax relief program to incentivize Brownfields cleanup and redevelopment authorized for certain local governments by HB 4084 is an important tool in the toolbox for tackling Brownfields sites that will otherwise languish abandoned or severely underutilized.

The authorized program is only intended to be made available to current property owners who can demonstrate that they have not caused, contributed to or exacerbated the contamination on the property through action or a failure to act when there is a legal duty to act.

The Types of Property Owners Who Would Be Eligible

Unlike the federal Superfund law, when Oregon adopted its strict liability for contamination scheme by enacting SB 122 in 1987, liability was carefully crafted to extend only to actual participation in or culpability for the acts or omissions that resulted in contamination. The program authorized by HB 4084 remains faithful to that liability system: culpable parties cannot qualify.

There are many small properties across Oregon that are contaminated with a variety of historical contaminants where the current owner did not cause or contribute to the contamination – auto repair yards, abandoned gas station sites, former locations of dry cleaners and the like. The program would be available to any such owners who are willing to step up and clean up the contamination under a plan supervised by the Department of Environmental Quality. By definition, the program would also be available to any innocent prospective purchaser that entered into a prospective purchaser agreement with DEQ under ORS 465.327 confirming their non-liability for the onsite contamination.

The Types of Property Owners Who Would Not Be Eligible

Culpable parties could not qualify for eligibility. The ineligible include: owners who knowingly allow their tenants to pollute, owners who had someone else dump hazardous materials, polluters who engage in sham transactions to transfer contaminated property to an affiliated entity or family member, and owners who refuse to allow DEQ to enter property to address contamination.